

**UNITED STATES OF AMERICA**  
**Responses to UNHCR Questions on**  
**Human Rights and Arbitrary Deprivation of Nationality**  
**February 2013**

The Government of the United States of America commends the Office of the High Commissioner for Human Rights for its continued concern and efforts on behalf of stateless persons worldwide. The United States is pleased to provide the following information in response to questions circulated by UNHCR by Note dated January 14, 2013, concerning Human Rights and Arbitrary Deprivation of Nationality.

**Background**

Under the Fourteenth Amendment of the Constitution of the United States, “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” The Immigration and Nationality Act (INA) § 101(a)(23) provides that “‘naturalization’ means the conferring of nationality . . . on a person after birth, by any means whatsoever.” The INA also provides for the acquisition of citizenship at birth by a child born abroad to one or two American parent(s) provided that statutory requirements are met. INA §§ 301 and 309. Thus, in general, United States citizenship may be acquired by birth in the United States, birth abroad to an American parent(s) under specified statutory terms, or after birth by naturalization under procedures provided for in U.S. law.

U.S. laws governing nationality and citizenship, and immigration as a general matter, are not specifically drafted to address statelessness, although in many circumstances these laws can provide important protections against this problem. Because United States law recognizes both the principle of *jus soli* and *jus sanguinis* for the acquisition of citizenship, U.S. law does not generally contribute to the problem of statelessness. In addition, the United States Supreme Court has affirmed that American citizenship cannot be relinquished except upon the voluntary commission of an expatriating act with the *intention to relinquish* citizenship. As the United States Supreme Court held in Afroyim v. Rusk:

“In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world -- as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a

rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.”

387 U.S. 253, 268 (1967).

Additionally, U.S. citizenship laws do not discriminate on the basis of race, national origin, ethnic origin, religion, or gender grounds. These three principles, taken together, provide important protections against statelessness in the United States. These aspects of U.S. law are more fully discussed in response to specific questions below.

The United States recognizes the right of expatriation and U.S. citizens can lose their citizenship through *voluntary* performance of an expatriating act *with the intention of relinquishing citizenship*. A U.S. citizen may exercise this right even in circumstances which could result in statelessness. In addition, a naturalized U.S. citizen who acquires citizenship after birth is subject to denaturalization if naturalization is improperly obtained (e.g., through fraud). Revocation procedures may take place in such cases even if the individual in question is thereby rendered stateless.

### **Information on U.S. Legislative Measures**

#### **1. On what grounds can nationals lose or be deprived of their nationality?**

U.S. law provides for loss of citizenship by voluntary commission of an expatriating act with the intention of relinquishing citizenship or through revocation of naturalization. INA § 349, *Loss of Nationality by Native-Born or Naturalized Citizen*, describes expatriating acts that result in loss of citizenship when performed voluntarily and with the intention of relinquishing United States nationality. Subsection 349(b) provides when loss of nationality is in issue that “the burden shall be upon the person or party claiming that such loss has occurred, to establish such claim by a preponderance of the evidence.” For certain acts covered by § 349, such as obtaining citizenship by naturalization in a foreign state, the United States applies an administrative standard that U.S. citizens intend to retain their U.S. citizenship. INA § 340, *Revocation of Naturalization*, sets forth the grounds and procedures for loss of citizenship by a naturalized U.S. citizen. Such cases must be brought in the Federal courts of the United States, and may be pursued in circumstances where the order admitting the person to citizenship and the certificate of naturalization were “illegally procured or were procured by concealment of a material fact or by willful misrepresentation.”

**2. Can an individual only lose or be deprived of nationality if he or she would not be rendered stateless? If so, are there exceptions to this rule? How are any such legislative safeguards against statelessness implemented in practice?**

No, the United States recognizes the right of expatriation as an inherent right of all people, and U.S. citizens can lose their nationality through voluntary performance of an expatriating act with the intention of relinquishing citizenship. U.S. citizens may exercise this right even where this would result in statelessness. Nonetheless, the United States has set forth administrative procedures to ensure potentially stateless persons will be informed of the severe hardships that could result. See 7 FAM 1215 and 1261. Separately, a U.S. citizen by naturalization may be denaturalized if such status was improperly obtained. These procedures also could result in statelessness if the person does not possess or acquire another nationality.

**3. Does the law ensure that individuals are not deprived of nationality on discriminatory grounds such as race, colour, sex, language, religion, political or other opinion, disability, national or social origin, property, birth or other status?**

The steps leading to loss of U.S. citizenship under the procedures in §§ 340 and 349, as outlined above, are applied on a non-discriminatory basis, and do not take into account race, sex, religion, political opinion, disability, or other such factors. Loss of U.S. nationality is based on voluntary performance of an expatriating act with intent to relinquish citizenship or revocation of citizenship improperly obtained through naturalization. Further, INA § 311, *Eligibility for Naturalization*, provides that “[t]he right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such a person is married.”

**4. What procedures exist for acquisition of documentation proving nationality by individuals who have automatically acquired nationality at birth or, where relevant, upon State succession? What documentation and other requirements must be satisfied by individuals who apply for proof of nationality? How many applicants for such proof of nationality are rejected because they are unable to meet the requirements?**

Persons acquiring citizenship through birth in the United States may apply for a U.S. passport, which serves both as a travel document and as proof of U.S. citizenship. The Passport Application Form DS-11, available at <http://travel.state.gov/passport>, describes the documentation required to be submitted with the application to demonstrate U.S. citizenship. A certified birth certificate showing birth in the United States is the most common primary evidence of citizenship, but many other forms of evidence demonstrating birth in the United States may be submitted. A child who acquires U.S. citizenship through birth abroad to an American parent (or parents) may be issued a “Consular Report of Birth Abroad of a Citizen of the United States” (CRBA) by a consular officer abroad. See 7 FAM 1441. These forms of proof of citizenship are addressed in the State Department Basic Authorities Act § 33 (22 U.S.C. § 2705), which provides:

The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship . . . :

- (1) A passport, during its period of validity . . . issued by the Secretary of State to a citizen of the United States.
- (2) The report, designated as a “Report of Birth Abroad of a Citizen of the United States,” issued by a consular officer to document a citizen born abroad.

INA § 338, *Certificate of Naturalization*, provides for persons who obtain citizenship through naturalization to obtain a certificate of naturalization which states that the applicant has been admitted as a citizen of the United States of America. INA § 341, *Certificates of Citizenship*, provides for issuance of a certificate of citizenship in specific situations.

**5. Do all children born on the territory of the State acquire nationality if they would otherwise be stateless? If so, does this occur automatically or upon application? If conditions apply, please list them. How many individuals have benefited from these provisions?**

In nearly all cases, children born in the United States acquire U.S. nationality. Under the Fourteenth Amendment to the Constitution of the United States, all persons born within the United States and subject to its jurisdiction are citizens. INA § 301, *Nationals and Citizens of the United States at Birth*, similarly provides that a person “born in the United States, and subject to the jurisdiction thereof” shall be a national and citizen of the United States. Children born in the United States to a sitting foreign head of state or to diplomats accredited to the United States are not subject to U.S. jurisdiction, and thus are an exception to the principle of *jus soli* and do not acquire U.S. citizenship. (The Code of Federal Regulations (CFR), 8 CFR 101.3, addresses the circumstances of children born to foreign diplomats in the United States and provides for lawful permanent resident status.) These principles for acquisition of U.S. citizenship apply in all cases, and without regard to whether the child would otherwise be stateless.

**6. Do all children born to nationals who are abroad acquire nationality? If not, do they acquire nationality if they would otherwise be stateless? If conditions apply, please list them. How many individuals have benefited from these provisions?**

Children born abroad to U.S. citizens can acquire U.S. citizenship under conditions prescribed by statute. In general, whether a foreign born child acquires U.S. citizenship at birth depends upon a combination of factors, including the citizenship status of the parents (the rules vary depending on whether one or both are U.S. citizens), their marital status (the rules differ for children born to parents who are not married to each other), and the parents’ length of residence or physical presence in the United States prior to the birth. See, generally, INA §§ 301 and 309. A foreign born child can also become a naturalized U.S. citizen, acquiring U.S. citizen after birth, upon fulfilling certain conditions specified by statute. Thus, INA § 320, *Children Born Outside the United States and Residing Permanently in the United States; Conditions Under Which Citizenship Automatically Acquired*, provides that a child born outside the United States automatically becomes a U.S. citizen where 1) at least one parent is a citizen, whether by birth or naturalization; 2) the child is under 18 years of age; and 3) the child is legally residing in the United States with the citizen parent. INA § 322, *Children Born and Residing Outside the United States; Conditions for Acquiring Certificate of Citizenship*, sets forth conditions for a

foreign born child residing abroad to obtain U.S. citizenship when at least one parent is a U.S. citizen. Again, these rules for acquisition of U.S. citizenship apply in all cases, and without regard to whether the child in question would otherwise be rendered stateless.

**7. Does the law provide a right to a fair hearing by a court for an individual who is: (i) denied issuance of documentation proving nationality; and/or (ii) affected by loss or deprivation of nationality?**

Principles of due process are enshrined in the Constitution of the United States, and, as with any legal action in the United States, apply to proceedings over loss of nationality or denial of documentation to prove nationality. Numerous provisions of the INA ensure that due process rights are observed. Under INA § 336, *Hearings on Denials of Applications for Naturalization*, if an application for naturalization is administratively denied the applicant may request a hearing before an immigration officer. If the immigration officer also denies the application, INA § 310(c), *Judicial Review*, provides that the applicant may seek review in Federal court and directs the court to conduct a *de novo* review of the application. INA § 340, *Revocation of Naturalization*, requires that the United States institute revocation proceedings in the Federal district court where the naturalized citizen resides, and requires sixty days personal notice of such action to the citizen. Under INA § 349, *Loss of Nationality by Native-Born or Naturalized Citizen*, after identifying the expatriating acts that may lead to loss of citizenship, subsection (b) states “[w]hensoever the loss of United States nationality is put in issue in any action or proceeding . . . under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence.” Thus, U.S. law places the burden to show loss of citizenship on the party asserting such loss, i.e., generally on the U.S. Government. Finally, INA § 360, *Proceedings for Declaration of United States Nationality in the Event of Denial of Rights and Privileges as National*, allows any person within the United States who is denied a right or privilege on the ground that he or she is not a national of the United States (e.g., such as denial of a passport) to file an action in Federal district court where the applicant resides for a judgment declaring him or her to be a national of the United States, except where nationality is in issue and may be addressed in removal proceedings.

**8. If a person is found to have been arbitrarily deprived of his or her nationality, does the law make provision for an effective remedy, including restoration of the person’s nationality?**

Yes, INA § 360, *Proceedings for Declaration of United States Nationality in the Event of Denial of Rights and Privileges as National*, permits a person deprived a right or benefit of citizenship to file an action for a declaratory judgment finding him or her to be a national. In such an action, U.S. law authorizes the court to “declare the rights and other legal relations of any interested party seeking such declaration . . . [and] [a]ny such declaration shall have the force and effect of a final judgment or decree.” See 28 USC § 2201.

**9. What are legislative and administrative measures leading to the deprivation of nationality of individuals or groups of individuals that would be considered arbitrary within your constitutional framework?**

Measures leading to loss of nationality that failed to comport with the U.S. Constitution and the provisions of U.S. law, including due process, could be considered arbitrary in the United States and would be addressed through judicial process as described above.

Drafted:L/CA:SMcCreary(7-1138)

2/6/2013      Unclassified

Cleared:L/CA:JKhawam(ok)

L/HRR:GBrancato(ok)

CA/OCS/L:EBetancourt(ok)

PRM:NShepardson(ok)

IO: ECampbell(ok)

USCIS/OGC:MGroom(ok)